

D.P.U. 96-25 (Phase II)

Petition of Massachusetts Electric Company and Nantucket Electric Company, pursuant to General Laws Chapter 164, §§ 76 and 94, and 220 C.M.R. §§ 1.00 et seq., for review of its electric industry restructuring proposal.

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I. INTRODUCTION

This Order addresses the provisions that were not a condition of approval of the Offer of Settlement ("Settlement") of electric industry restructuring issues for Massachusetts Electric Company ("MECo") filed with the Department of Public Utilities ("Department") by MECo and certain other parties on October 1, 1996 in D.P.U. 96-25.

II. PROCEDURAL BACKGROUND

On February 16, 1996, MECo submitted its restructuring proposal, which was docketed as D.P.U. 96-25. On October 1, 1996, MECo, Nantucket Electric Company ("Nantucket") (MECo and Nantucket are collectively referred to as "MECo" or "Company") and New England Power Company ("NEP") submitted the Settlement of the Company's restructuring proposal.¹ The Department conducted a procedural conference on November 7, 1996, and limited the scope of Phase I of the proceeding to issues that were a condition of the Offer of Settlement. See November 8, 1996 Memorandum, Summary of the Procedural Conference. The Department deferred issues that were not a condition of the Offer of Settlement to Phase II and stated that a procedural schedule would be established for Phase II.² Id. On February 26,

¹ The Settlement was signed by the Company, American National Power, American Tractebel-CRSS, Inc., the Attorney General, Conservation Law Foundation, KCS Power Marketing, Inc., Irving Bernstein and Pearl Noorigian (collectively, the "Low-Income Intervenors"), Massachusetts Community Action Directors Association, Massachusetts Division of Energy Resources, Massachusetts Energy Directors Association, Massachusetts High Technology Council, Northeast Energy and Commerce Association, Northeast Energy Efficiency Council Inc., The Energy Consortium, Union of Concerned Scientists, and U.S. Generating Company.

² On January 10, 1997, the Department issued a letter stating that most of the Settlement provisions were consistent with the Department's electric industry restructuring goal and principles and our proposed restructuring plan, and represented a reasonable resolution of many restructuring issues. The Department stated that resolution of specific concerns

1997, the Department approved a Revised Amended Settlement in Phase I, and the Hearing Officer issued a Notice of Procedural Conference to address the Phase II issues.³ Massachusetts Electric Company, D.P.U. 96-25 (Phase I) (1997). On March 18, 1997, the Department conducted a procedural conference to establish a schedule for Phase II.

with respect to the proposed unbundling of rates and financing provisions would be necessary before the Department would approve the Settlement. On January 14, 1997, the Company submitted amendments to the Settlement intended to address the Department's concerns ("Amended Settlement"). On February 13, 1997, the Company submitted modifications to the Amended Settlement ("Revised Amended Settlement") intended to address concerns of members of the Massachusetts State Senate with regard to the effect of the Amended Settlement on future legislative actions in restructuring electric utilities in Massachusetts.

³ The Amended Settlement, but for the changes to the rate unbundling and financing provisions, was identical to the Settlement. The Revised Amended Settlement, but for the modifications on pages 22, 34, and 36, was identical to the Amended Settlement. The Department marked the Amended Settlement as Exhibit MECo-9 and the Revised Amended Settlement as Exhibit MECo-10, and on its own motion, made the Amended Settlement and Revised Amended Settlement part of the record in D.P.U. 96-25 (Phase I).

III. PHASE II ISSUES

The Department deferred to Phase II its consideration of certain provisions of the Revised Amended Settlement that were not conditions of its approval.⁴ Specifically, the Department did not act on the provisions of ' I that include the terms and conditions with

⁴ In D.P.U. 96-25 (Phase I), the Department approved the following provisions, which were conditions of the Revised Amended Settlement:

- ' I. Price Reductions for All Customers, including (A) the unbundling of rates through the retail access date, (B) retail delivery rates and the standard offer effective from the retail access date through December 31, 2004, and (C) the right to file for a rate change in the event that the retail access date has not occurred by January 1, 2001;
- ' II. Benefits of Competition Extended to All Customers, provisions for (A) prior commitments with customers, and (B) the implementation of retail access;
- ' III. Protect the Environment and Promote Conservation, including (A) siting reform, (B) emissions reductions, and (C) conservation and load management, and renewables;
- ' IV. Protect Low-Income Customers, including the continuance of the low-income customer discount, funding of low-income customer DSM programs, and protection against redlining;
- ' V. Creation of a Fully Functioning Stable and Reliable Structure for the Competitive Market provisions that include (C) the separation of generation and transmission properties and facilities, (D) divestiture of NEP's generating facilities, and (G) unbundled distribution services;
- ' VI. Successors and Assigns, including the rights and obligations imposed on any signatory to the Revised Amended Settlement;
- ' VII. Additional Provisions, concerning the protection of settlement negotiations and the precedential effect of the Revised Amended Settlement.

customers under retail delivery rates (Exh. MECo-1, vol. 3, Att. 4),⁵ and the terms, conditions, and settlement process with suppliers under retail delivery rates (id., Att. 9). In addition, the Department did not act on the provisions of ' V. that include (A) regional reform (Exh. MECo-10, at 28, citing Exh. MECo-1, vol. 3, Att. 11), (B) the jurisdictional separation between transmission and distribution (id. citing Exh. MECo-1, vol. 3, Att. 12), and (E) standards of conduct (id. at 35, citing Exh. MECo-1, vol. 3, Att. 14).

IV. PARTIES' PROPOSALS

Proposed procedural schedules were submitted by Enron Capital & Trade Resources ("Enron") and the Company. Both procedural schedules provide for the submission of prefiled testimony, discovery, evidentiary hearings, and briefs, and contemplate a Department Order in

⁵ See also ' V. Creation of a Fully Functioning Stable and Reliable Structure for the Competitive Market (F) (customer service standards). The performance standards under retail delivery rates are binding on the Company, unless generic standards that are more stringent are approved by the Department (November 7, 1996 Procedural Conference, Tr. at 21-22, citing Exh. MECo-1, vol. 3, Att. 7).

July of 1997.⁶ In addition, MECo requested that it be allowed to submit updated attachments and that the Department schedule a technical conference.⁷ Boston Edison Company submitted comments requesting that the Department define whether this proceeding would establish generic customer terms and conditions or supplier settlement procedures.

⁶ Both schedules recognize that resolution of Phase II issues is not necessary for the implementation of the Company's unbundled rates. See D.P.U. 96-100, App. I (December 30, 1996 Procedural Order directing all electric companies to file revenue-neutral unbundled rates on March 3, 1997).

⁷ The Company proposed to include standards for interconnection with generators that are consistent with those on file with the Federal Energy Regulatory Commission. The Company also proposed to include revisions and improvements to the proposed terms, conditions and settlement procedures based on experience with the pilot programs.

With its proposed procedural schedule, MECo raised both substantive and procedural concerns. The Company proposed that the scope of Phase II be limited to a review of the terms and conditions with both customers and suppliers, and the separation of transmission and distribution facilities. In support of its proposal, the Company stated that regional discussions on New England Power Pool ("NEPOOL") reform are complete and have led to a comprehensive filing with the Federal Energy Regulatory Commission ("FERC"), and that the NEPOOL filing complies with MECo's and NEP's commitment under the Revised Amended Settlement.⁸ The Company also stated that the issues associated with the implementation of standards of conduct have been resolved by the Department in D.P.U. 96-44 (1996), and that it does not believe further proceedings are necessary. MECO also requested that this proceeding remained focused on the issues identified for Phase II, and not become a generic restructuring proceeding.

At the March 18, 1997 procedural conference, Enron contended that neither D.P.U. 96-44 nor D.P.U. 96-100 preclude adoption of company-specific standards of conduct. Enron stated that it would be appropriate for the Department to look at potential market-power abuse and cross-subsidization issues (i.e., concerning MECo and AllEnergy, its retail marketing affiliate), and adopt Company-specific rules if necessary. Western Massachusetts Electric Company ("WMECo") indicated that it would have some questions on clarification of the standards of conduct. The Division of Energy Resources and Enron stated that they have discovery on the terms and conditions with customers, and the terms, conditions and settlement

⁸ See New England Power Pool, Docket Nos. OA97-237-000 and ER97-1079-000.

process with suppliers under retail delivery rates, and that they may submit testimony or conduct cross-examination on these provisions.⁹

⁹ Enron indicated a concern with the notice obligation placed on customers, metering and billing requirements, and termination procedures.

Alternate Power System, New Energy Ventures, and Northeast Energy Efficiency Council requested that the Department establish a schedule (including working groups) to unbundle distribution services.¹⁰ The Attorney General stated that the issue of unbundling distribution services has been resolved, and WMECo stated that unbundling distribution service is not an issue that should be considered in Phase II.

Enron also requested clarification of whether the bid procedures for the supply of standard offer service are within the scope of Phase II. On April 11, 1997, Enron submitted comments noting that the Company had issued its request for qualifications ("RFQ") to provide standard offer service supply. Enron stated that the RFQ presents issues related to supplier selection, allocation of standard offer customers, and obligations of standard offer service suppliers. Enron requested that the Department review the procurement process.¹¹

V. ANALYSIS AND FINDINGS

After considering the concerns raised at the Phase II procedural conference, the Department must identify which issues have been resolved, which issues will be resolved in

¹⁰ The Settlement provides that, effective January 1, 2000, MECo would file a proposal with the Department to unbundle distribution services that can be provided competitively, without impairing system reliability or other system benefits.

¹¹ Enron stated that a Department review of the RFQ may take place in a proceeding separate from Phase II issues.

other forums, and which issues remain to be resolved by the Department. For those issues that remain to be resolved by the Department, we must consider whether to address these issues generically, or on a company-specific basis. Because the issues in Phase II were not a condition of the Revised Amended Settlement, our decision in Phase II does not affect the Department's approval of Phase I issues.

The Revised Amended Settlement contains terms and conditions that apply to all customers as a requirement for the initial and continuing delivery of electricity. These include the requirements for providing local distribution service, protection of Company property, payment of bills, rate schedule changes, measurement of electricity and service quality, auxiliary and temporary local distribution service, underground surcharge, and liabilities.

The Revised Amended Settlement also contains provisions for the terms, conditions, and settlement process with suppliers, and customers can only choose suppliers who meet these provisions. These provisions set out the responsibilities of the Company and alternative suppliers including billing, metering, determination of hourly loads, NEPOOL responsibilities, delivery points, back-up supply obligations, losses, service disconnect procedures, distribution service interruptions, authorization to release customer information, and liability and indemnification.

In D.P.U. 96-100, at 107-108, the Department stated that companies that provide distribution services will need to submit terms and conditions that would govern their relationship with customers and competitive suppliers in the restructured electric industry. Because terms and conditions with both customers and suppliers for all companies are necessary

before the retail access date, the Department finds that a generic proceeding rather than a company-specific proceeding is the most efficient approach to establish a framework for these terms and conditions. Accordingly, the Department does not approve the provisions of the Revised Amended Settlement that include the terms and conditions with customers and the terms, conditions, and settlement process with suppliers under retail delivery rates (Exh. MECo-1, vol. 3, Att. 4 and Att. 9), and will instead initiate a proceeding to establish generic terms and conditions.¹²

The regional reform issues center on the formation of a regional transmission group, an independent system operator, and NEPOOL reform. In D.P.U. 96-100, at 39-52, the Department noted that the FERC has jurisdiction over operation of the bulk power system. Accordingly, the Department does not have jurisdiction to approve the provision of the Revised Amended Settlement that addresses regional reform (Exh. MECo-1, vol. 3, Att. 11).

¹² No later than ninety days before the retail access date, MECo shall submit company-specific proposed terms and conditions with customers and suppliers to address any issues not resolved by the generic proceeding.

The Revised Amended Settlement asserts that the current separation of transmission facilities owned by NEP and the distribution facilities owned by MECo meets the FERC's seven-part test for determination of transmission and distribution facilities and should be adopted by the FERC for ratemaking purposes.¹³ In D.P.U. 96-100, at 55-57, the Department directed electric companies in Massachusetts to file analyses supporting classifications of their transmission and distribution facilities based on application of the FERC's seven-part test. A delineation of transmission and distribution facilities that is consistent across utility companies is most appropriate. Accordingly, the Department does not approve the provision of the Revised Amended Settlement that addresses the jurisdictional separation between transmission and distribution (Exh. MECo-1, vol. 3, Att. 12), and will instead proceed with a coordinated approach to the determination of transmission and distribution facilities to meet the FERC's seven-part test.¹⁴

The Revised Amended Settlement provides that MECo shall adopt the standards of conduct set forth in Attachment 14. In D.P.U. 96-44, the Department adopted standards of conduct to govern the relationship between a regulated distribution company and its competitive affiliate. The standards of conduct adopted in D.P.U. 96-44 supersede the standards of conduct proposed in the Revised Amended Settlement, and company-specific standards of conduct are

¹³ In the event that costs are transferred between transmission and distribution accounts, the Revised Amended Settlement provides that appropriate adjustments to the transmission and distribution components of the rates would be made to reflect the transfer.

¹⁴ This may be accomplished through settlement discussions within the FERC proceedings or, if necessary, through company-specific adjudications by the Department.

not contemplated.¹⁵ Accordingly, the Department does not approve the provision of the Revised Amended Settlement that addresses the standards of conduct (Exh. MECo-1, vol. 3, Att. 14).

With respect to the unbundling of distribution functions, in D.P.U. 96-100, at 105, the Department stated that after the retail access date of January 1, 1998, or after distribution company performance-based ratemaking is in place, it would entertain proposals for allowing the orderly development of competition for certain distribution functions. The Department may be able to act quickly in this area if presented with a proposal based on broad consensus.

Finally, in D.P.U. 96-25 (Phase I), the Department approved MECo's proposed retail delivery rates and standard offer. The Revised Amended Settlement provides that the terms and conditions for the bids by potential suppliers for standard offer service are set forth in Exhibit MECo-1, vol. 3, Att.8. Exh. MECo-10, at 16. Because this provision was approved by the Department in D.P.U. 96-25 (Phase I), it is not within the scope of Phase II and the Department will not reopen the issue.

¹⁵ Application of the D.P.U. 96-44 standards of conduct in particular situations will be determined on a case-by-case basis.

With respect to Enron's request that the Department review the process of selecting a standard offer supplier, the Department notes that the Company has reserved the right to modify the RFQ process (RFQ at 1). The Company's solicitation process should be fair and not impose unreasonable conditions that result in barriers to entry for new suppliers. The Department expects the Company to make modifications to the RFQ process that are necessary to address valid concerns raised by participants to the process.¹⁶

¹⁶ In D.P.U. 96-100, at 137, the Department stated that it would review a distribution company's standard offer pricing proposal, and to the extent that a company's standard offer proposal is the result of a competitive solicitation, the Department's review should be minimal. In order to ensure that the Department's review is as efficient as possible, the standard offer supplier procurement process should be well documented and transparent.

VI. ORDER

Accordingly, after due notice, hearing, and consideration, it is

ORDERED: That the provisions of the Revised Amended Settlement containing terms and conditions for customers under retail delivery rates, Exhibit MCo-1, vol. 3, Att. 4, be and hereby are DISAPPROVED; and it is

FURTHER ORDERED: That the provisions of the Revised Amended Settlement containing terms, conditions, and settlement process with suppliers under retail delivery rates, Exhibit MCo-1, vol. 3, Att. 9, be and hereby are DISAPPROVED; and it is

FURTHER ORDERED: That the provisions of the Revised Amended Settlement addressing regional reform, Exhibit MCo-1, vol. 3, Att. 11, be and hereby are DISAPPROVED; and it is

FURTHER ORDERED: That the provisions of the Revised Amended Settlement addressing the jurisdictional separation between transmission and distribution, Exhibit MCo-1, vol. 3, Att. 12, be and hereby are DISAPPROVED; and it is

FURTHER ORDERED: That the provisions of the Revised Amended Settlement addressing standards of conduct, Exhibit MCo-1, vol. 3, Att. 14, be and hereby are DISAPPROVED; and it is

FURTHER ORDERED: That Massachusetts Electric Company shall comply with all orders and directives contained herein.

By Order of the Department,

John B. Howe, Chairman

Janet Gail Besser, Commissioner